UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JERRY DEAN PETERSON,

Petitioner,

v.

JOHN FLOOD,

Respondent.

Case No. 2:24-cv-00206-JLR-TLF

REPORT AND RECOMMENDATION

Noted for November 7, 2024

Petitioner, a pretrial detainee in Snohomish County, seeks federal habeas relief under 28 U.S.C. 2241 from pending criminal charges. Dkt. 10. Respondent filed an answer to the petition on August 7, 2024. Dkt. 15. For the reasons set forth below, the undersigned recommends that the petition be DISMISSED without prejudice. Also, for the reasons set forth below, the undersigned recommends that issuance of the certificate of appealability (COA) be DENIED as well.

BACKGROUND

Petitioner is awaiting trial in Snohomish County Superior Court for offenses under Washington State law including rape of a child in the first, second and third degrees. Dkt. 16-1, at 2-3 (State's Appendix A, Information and Affidavit of Probable Cause). The trial is scheduled for November 12, 2024. Dkt. 16-1 at 42 (State's Appendix B, Order Continuing Trial).

Petitioner raises claims of ineffective assistance of counsel and speedy trial violations. Dkt. 10.

Petitioner's trial was originally scheduled for March 20, 2020. Dkt. 16-1 at 12 (State's Appendix B, Order Continuing Trial). The Court granted continuances 13 times for reasons including the COVID-19 pandemic (*Id.* at 16-17) and Petitioner's attorneys needing more time to prepare for trial (*Id.* at 14, 18, 22, 24, 26, 28, 31, 39, 42). Petitioner has had four different attorneys appointed to represent him. *See id.*

As relief, Petitioner requests that the Court grant his petition. Dkt. 10 at 7.

DISCUSSION

Because Petitioner is a pre-trial detainee facing unresolved and pending state criminal charges the Court must determine whether it must abstain under *Younger v. Harris*, 401 U.S. 37 (1971). A federal court must abstain under *Younger* when: (1) there is an ongoing state judicial proceeding; (2) the proceeding implicates important state interests; (3) there is an adequate opportunity in the state proceedings to raise constitutional challenges; and (4) the requested relief seeks to enjoin or has the practical effect of enjoining the ongoing state judicial proceeding. *Arevalo v. Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018). Federal courts will not abstain under *Younger* when there is a showing of bad faith, harassment, or some other extraordinary circumstance that would make abstention inappropriate. *Id.* at 765–66.

The *Younge*r abstention doctrine applies to actions seeking federal habeas corpus relief. *See Drury v. Cox*, 457 F.2d 764,764-65 (9th Cir. 1972) ("only in the most unusual circumstances is a defendant entitled to have federal interposition by way of injunction or habeas corpus until after the jury comes in, judgment has been appealed from and the case concluded in the state courts."). Additionally, absent specifically defined extraordinary circumstances, principles of federalism and comity prohibit a

federal district court from entertaining a pre-conviction habeas petition that raises a Speedy Trial claim as an affirmative defense to state prosecution. *Brown v. Ahern*, 676 F.3d 899 (9th Cir. 2012).

The Court should abstain in this case because the *Younger* factors are met. Petitioner faces an ongoing state criminal prosecution which clearly implicates important state interests; petitioner can raise his constitutional challenges by filing motions in the state courts; and the requested habeas relief would undermine the state courts' determinations regarding petitioner's criminal case. Claims of speedy trial violations and the ineffective assistance of counsel will be reviewable both in state court and, if necessary, in subsequent federal habeas corpus proceedings following exhaustion of state remedies on direct appeal and post-conviction proceedings in state court.

Further, the record does not show the type of extraordinary circumstances that would potentially give the federal court grounds for an exception to the abstention doctrine. There is no evidence of bad faith or harassment; he alleges ineffective assistance of counsel, he alleges claims related to the health difficulties experienced by petitioner while in isolation at the jail, and he alleges that events occurred in the Courts and jails that had a detrimental effect on justice in his case, during the COVID-19 global pandemic. *See e.g.*, Dkt. 10, Petition for Habeas Corpus, at 7, 28-29 (petitioner alleges delay and continuous detention beginning in January of 2020, difficulty communicating with his attorneys during isolation at the jail, that he experienced a heart condition, and deteriorating mental health, beginning in 2020). The Court accordingly concludes *Younger* abstention is appropriate and recommends the case be dismissed without prejudice.

CERTIFICATE OF APPEALABILITY

A certificate of appealability is required for habeas petitions under § 2241 challenging pretrial detention. *Wilson v. Belleque*, 554 F.3d 816, 824 (9th Cir. 2009). A prisoner seeking habeas relief may appeal a district court's dismissal of the petition only after obtaining a COA from a district or circuit judge. A COA may be issued only where a petitioner has made "a substantial showing of the denial of a constitutional right." *See* 28 U.S.C. § 2253(c)(3). A prisoner satisfies this standard "by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Under this standard, the Court finds no reasonable jurist would disagree the Court should abstain under *Younger.* The Court should therefore not issue a COA. Petitioner should address whether a COA should issue in his written objections, if any, to this Report and Recommendation.

CONCLUSION

Based on the foregoing discussion, the undersigned recommends that the Court dismiss the petition for writ of *habeas corpus* without prejudice. A certificate of appealability should be denied.

Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have fourteen (14) days from service of this report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of *de novo* review by the district judge, *see* 28 U.S.C. § 636(b)(1)(C), and can result in a waiver of those objections for purposes of appeal. *See Thomas v. Arn*, 474

U.S. 140, 142 (1985); *Miranda v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (citations omitted). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the Clerk is directed to set the matter for consideration on **November 7, 2024**, as noted in the caption.

Dated this 23rd day of October, 2024.

Theresa L. Fricke
United States Magistrate Judge